

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
Baltimore Division

In Re:

Arthur and Gwendolyn Buchanan	*	Case No: 21-10348
Debtors	*	Chapter 13
* * * * *	*	
Arthur and Gwendolyn Buchanan	*	
Movant	*	
v.	*	
Maryland Attorney General		
200 St. Paul Place	*	
Baltimore, MD 21202	*	
Maryland Department of Assessment & Taxation		
Comptroller of the Treasury	*	
State Office Building		
301 W. Preston Street	*	
Baltimore, Md 21201-2395	*	
Respondent	*	
* * * * *	*	

MOTION TO AVOID JUDICIAL LIEN OF COMPTROLLER OF MARYLAND  
AS IMPAIRING EXEMPTION PUSUANT TO USC § 522

Arthur and Gwendolyn Buchanan, debtors/movants, by their attorney, David L. Ruben, hereby files this Motion to Avoid Judicial Lien of Comptroller of Maryland as Impairing Exemption Pursuant to 11 USC § 522, for the avoidance and cancellation of judicial lien against his real property said lien impairs the debtor's exemption and respectfully represents that:

1. On or about January 19, 2021 the Debtors/Movants filed for relief under Chapter 13 of the United States Bankruptcy Code.

2. That this is a core proceeding.

3. This Court has jurisdiction over this motion to avoid judicial liens pursuant to 28 U.S.C. §§ 1334(b), 157(b)(2)(A), (K), (O), 11 U.S.C. §§ 522(f)(1)(A), 522(f)(2), 522 (g), 522(h), and Federal Rules of Bankruptcy Procedure 4003(d) and 9014.

4. Upon information and belief, Debtor/Movant alleges that the Comptroller of Maryland ("Respondent") handles delinquent tax collection.

5. At the time of the filing of the bankruptcy case, the debtors owned and still own as tenants by the entirety the real property and improvements known as 5433 Moores Run Drive Baltimore, MD 21206 ("subject property"), pursuant to the original Deed dated February 23, 2007, recorded among the Land Records of Baltimore City at Liber 9161, pages 159-165. See Debtor's Exhibit 1 Deed, attached hereto and incorporated by reference.

6. That the market value of the property is One Hundred Forty-Three Thousand Six Hundred Twenty Dollars (\$143,620.00) as determined by a market analysis obtained from Zillow.com on January 15, 2021, based on comparables in the same community and attached hereto as Exhibit 2 and is incorporated herein by reference.

7. Servicing Corporation is a secured creditor of the debtors and are the first lien holder and/or successor in interest against the subject property pursuant to a Deed of Trust dated February 23, 2007, and recorded among the Land Records of Baltimore City at Liber 9161, Pages 166-179. See Deed of Trust attached hereto as Exhibit 3 and incorporated herein by reference.

8. The lien held by Servicing Corporation has an outstanding secured balance due in the amount of One Hundred Fifty-Seven Thousand Seven Hundred Ninety-Four Dollars and Thirteen Cents (\$157,794.13) according to Mortgage Payoff Statement dated January 18, 2021. See Mortgage Payoff Statement attached hereto as Exhibit 4 and incorporated herein by reference.

9. On or about May 3, 2017 Comptroller of Maryland recorded a Judicial Lien in the amount of Ten Thousand Two Hundred Fourteen Dollars and Ten Cents (\$10,214.10). See Comptroller of Maryland Lien attached hereto as Exhibit 5 and incorporated herein by reference.

Count I (Impairment of Exemption)

10. The allegations in paragraphs 1 through 9 are incorporated herein by reference as if fully set forth.

11. The Debtors/Movants have claimed their interest in the real property as exempt.

12. The amount of the exemption which the debtor/movant could claim if there were no liens against the real property would be Twenty-Five Thousand One Hundred Fifty dollars (\$25,150.00) pursuant to Md. Ann. Code, CJ §§ 11-504(f)(1)(i)(2).

13. The debtors/movants contends that the judicial lien held by the respondent impairs their allowable exemption to the extent of Twenty-Five Thousand One Hundred Fifty dollars (\$25,150.00). *Canelos v. Mignini t/a TAM-D Construction, et al. (In re Canelos)*, 216 B.R. 159,163-64 (Bankr.D.Md. 1997).

14. To further illustrate:

Servicing Corporation		\$157,794.13
Comptroller of MD Lien		\$10,214.10
Exemption Debtor could claim	+	<u>25,150.00</u>
TOTAL	=	\$193,158.23

15. Pursuant to Section 522(f)(2), a lien shall be considered to impair an exemption to the extent that the sum of the lien, plus all other liens on the property, plus the amount of the exemption the debtor/movant could claim if there were no liens on the property, exceeds the value that the debtor/movant interest in the property would have in the absence of any liens.

16. Thus, the lien created by the mortgage on the property, plus the Judicial lien, plus the available exemption equals \$193,158.23 which is greater than the debtor/movant's interest in the

property of \$143,620.00, and therefore, the Judicial Lien held by the Comptroller of Maryland, must be wholly avoided.

**WHEREFORE**, Arthur and Gwendolyn Buchanan, debtors/movants, respectfully requests that this Honorable Court:

1. Determine the lien held by the Comptroller of Maryland, respondent, against the debtor's real property and improvements known as 5433 Moores Run Drive Baltimore, MD 21206 to be zero dollars (\$0.00);
2. Determine the debt owed to the Comptroller of Maryland, respondent, to be unsecured in its entirety;
3. Upon the entry of a discharge pursuant to 11 U.S.C. § 1328, avoid and cancel the liens of record held by the Comptroller of Maryland, respondent, against the debtor's real property and improvements known as 5433 Moores Run Drive Baltimore, MD 21206, appoint a trustee to act on behalf of the Comptroller of Maryland to execute any document necessary to releases such liens; and
4. Award to the debtors such other and further relief as is just and proper.

Respectfully submitted,

/s/David L. Ruben  
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